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T H O U G H T S

O N T H E

LETTER OF EDMUND BURKE, ESQ.

HAVING seen Mr. Burke's late Publication on the affairs of America, I was led to read it with all that attention which every performance of his must necessarily deserve. I sympathise most cordially with him in those feelings of humanity, which mark, in language so expressive, the abhorrence of his nature to the effusion of Human Blood. I agree with him in idea, that the War with America is "fruitless, hopeless, and unnatural"; and I will add, on the part of Great Britain, cruel and unjust. I join hand in hand with him in all his propositions for Peace; and I look with longing eyes for the event. I participate with him in the happiness of those friendships and connexions, which are the subjects, so deservedly, of his panegyric. The name of Rockingham is a sacred deposit in my bosom. I have found him disinterested, I know him to be honest. Before I quit him therefore, I will first abandon human nature.

So far then are Mr. Burke and I agreed. I am sorry that we should disagree in any thing. But finding that we have differed, on a late occasion, in our parliamentary conduct; and that I cannot concur with him



him in opinion on a matter, as I think, of very great national importance: it is therefore not in the zeal of party, but in the spirit of patriotism, not to confute, but to be convinced, not to point out error, but to arrive at truth, that I now venture to submit my thoughts to the Public. I feel the weight of the undertaking, and I wish it in abler hands. I am not insensible to my own incapacity, and I know how much I stand in need of excuse; but as public good is my object, public candour, I trust, will be my best apologist.

Mr. Burke commences his Letter with the mention of "the two last Acts which have been passed with regard to the troubles in America." The first is, "for the Letter of Marque," the second, "for a partial suspension of the *Habeas Corpus*." Of the former, he says little, as not worthy of much notice. Of the latter, his distinctions are nice, his strictures many, his objections unanswerable; and yet, although so well apprised of the dangers and mischiefs of this Act, he says, "I have not debated against this Bill in its progress through the House, because it would have been vain to oppose, and impossible to correct it." But this is matter of inquiry. As I thought differently, I acted differently. Being in the country, this Bill was in its way through the House of Lords before I knew any thing of it. Upon my coming accidentally to town, and hearing of its malignity, I went down to the House, I opposed it, and entered my solemn protest on the journals against it. It is true, I stood single and alone in this business; but I do not therefore take shame to myself. Rectitude of intention will even sanctify error. But Mr. Burke says,
"During

“ During its progress through the House of Commons, it has been *amended*, so as to express more distinctly than at first it did, the avowed sentiments of those who framed it.” Now if the Bill was *amended* in its progress through the House of Commons, Mr. Burke’s reason “ for not debating against the Bill” cannot be well founded, for his reason is, “ that it would have been vain to oppose, and *impossible to correct* it :” but to *amend* a thing is to *correct* it ; and therefore if the Bill was *amended*, it was *not impossible to correct* it.

The case was this. This Bill was brought into the House of Commons under the black coverture of designing malice. Some of the honourable Members of that house seeing it in this dark disguise, endeavoured to unrobe it of its darkness. Their endeavours succeeded, and “ it was *amended*, so as to express more distinctly than it at first did, the avowed sentiments of those who framed it.” In this shape it came to the House of Lords: bad enough in all conscience: but I use Mr. Burke’s own words when I say, “ there is a difference between bad and the worst of all.” I thought it bad, and therefore I put my negative upon it: had it been worse, *a fortiori*, I should have done the same. But here it would seem as if Mr. Burke and I were not agreed in our notions of *bad* and *worse*: for what he holds *bad*, I esteem *worse*, and what he calls *worse*, I think *bad*. To explain myself. He considers a *partial* Suspension of the *Habeas Corpus* a greater evil than an *universal* Suspension of it. I conceive the contrary: though if Mr. Burke’s premises were right, I should approve his reasoning, and admit his consequences. He says, “ whenever an Act “ is made for a cessation of law and justice, the whole “ people

“ people should be universally subjected to the same
 “ suspension of their franchises.” Be it so : but then
 the whole people should fall under the reason and
 occasion of the Act. If England was under the same
 predicament with America, that is to say, if Eng-
 lishmen were looked upon to be Rebels, as the
 Americans are, in such a case, a *partial* suspension of
 the *Habeas Corpus* would be invidious, and conse-
 quently more unjust than a *general* suspension of it ;
 for why should one Rebel be distinguished from
 another ? but Englishmen are not accounted Rebels,
 and the Americans are ; and therefore in the same
 degree that a *partial* suspension, on the one hand,
might be just, an *universal* suspension, on the other,
would be unjust. Where the offence is local, the pu-
 nishment too must be local. It would have been un-
 just if the lands in America had been forfeited to
 the Crown in the year 1745, because Scotland
 was then in rebellion. I do not use these arguments
 in favour of the Bill. The principle was *bad* with
 respect to America : it was *worse* with regard to this
 country. And herein consisted the very malignity
 of the Bill : for whilst the *Habeas Corpus* was taken
 away from the *imputed guilty* Americans, the *innocent*
 English were at the same time deprived of its bene-
 fit ; suspicion, without oath, being made the two-
 edged sword that was to cut both ways.

But, says Mr. Burke, “ The alarm of such a pro-
 “ ceeding,” (that is of an universal suspension of the
 “ people’s franchises) “ would then be universal. It
 “ would operate as a sort of *call of the nation.*” As
 to my part, I have heard so many *calls of the nation*
 of late, without any *answer* being made to them ;
 that I fear the *nation* has either lost its *hearing* or its
voice :

voice: but supposing otherwise, of what avail can a *call of the nation* be against the supremacy of an act of parliament? And who shall dare to resist the authority of a statute that can alter the established religion of the land, nay even bind *in all cases whatsoever*? But more of this by and by.

Mr. Burke goes on to say, "As things *now* stand, "every man in the West-Indies, every one inhabitant of three unoffending Provinces on the Continent, every person coming from the East-Indies, "every gentleman who has travelled for his health "or education, every mariner who has navigated "the seas, is, for no other offence, under a temporary proscription." But how did things stand *before the amendment* of the bill? Not only every man as described above, but *every individual* in this kingdom, was under the same temporary proscription. The writing of a letter to, or receiving a letter from America, in this country, though the contents were ever so harmless, was ground of suspicion sufficient to immure a man in the castle of Dumfries, or Pendennis, or wheresoever else persecution should think fit to send him *. We have been saved from this hell-governed proscription. Opposition removed it from us. It had been well to have done so from every subject of the realm: but it did what it could, and the liberty

* It is said that the number of persons who died in different prisons during the despotic government of the Marquis de Pombal, late minister of Portugal, *without having been convicted of any crime*, is computed at 3970 persons; and those who were languishing in irons at the time of his disgrace amounted to 800. If this act had passed, as it was first framed, and if we may measure our punishments by those meted out to our brethren in America; what reason is there to suppose that our situation had not been the very counterpart of this?

of

of many unoffending persons has been preserved thereby.

This being the state of the bill, *amended*, as Mr. Burke himself confesses, one might have thought that, though *bad*, it was *better* than it had been; but the very reverse of this is the opinion of Mr. Burke: for in one place, he says, “ the limiting qualification, instead of taking out the sting, does, in my humble opinion, sharpen and envenom it to a greater degree.” And, in another, he adds, “ that far from softening the features of such a principle, and thereby removing any part of the popular odium or natural terrors attending it, I should be sorry that any thing framed in contradiction to the spirit of our constitution did not instantly produce in fact, the grossest of the evils, with which it was pregnant in its nature.” So that *amendment*, by softening the features, and removing the popular odium, without producing the grossest of evils with which it was pregnant in its nature, has, if I may use such terms of contrariety, made the bill *worse*. Such is the doctrine of Mr. Burke, and just it may be: but if it be, I can only say, that he and I see objects through different mediums; and that if he thinks it right to do evil that good may come of it, I wish to do good, by averting the evil. The physician that stops the progress of a disease, may, at one time or another, hope for its cure; but he that leaves the disease to the efforts of nature alone, trusts to a cause that is very unsure in the effect. Mr. Burke, however, in aid of his opinion, says, that, “ On the next unconstitutional act, all the fashionable world will be ready to say—Your prophecies are ridiculous, your fears are vain, you see how little of the
“ mischiefs

“ mischiefs which you formerly forboded are come
 “ to pass. Thus by degrees that artful softening of
 “ all arbitrary power, the alledged infrequency or
 “ narrow extent of its operation, will be received as
 “ a sort of aphorism : and Mr. Hume will not be sin-
 “ gular in telling us, that the felicity of mankind is
 “ no more disturbed by it, than by earthquakes, or
 “ thunder, or the other more unusual accidents of
 “ nature.” Now as to the fashionable world, living as
 they do under the tyranny of that greatest of all ty-
 rants, *fashion*, upon such an occasion, I should hard-
 ly look up to them as a fit court of appeal. And as
 to Mr. Hume, let those remember who adopt his
 aphorisms—that that great philanthropist and friend
 of liberty, Doctor Franklin, has not in the depths of
 his wisdom thought, “ alledged infrequency or nar-
 “ row extent of operation,” any argument to prevent
 the protection of mankind even “ against the more
 “ unusual accidents of nature ;” and let them in the
 remembering of this, regret, that his politics, like his
 philosophy, have not been the subjects of our experi-
 ment. Happy, thrice happy, had it been for this
 country, if, instead of besetting this able man with
 foul-mouthed language, and indecent mockery, (in-
 decent doubly so, because of the venerable council
 before whom he stood,) his advice, like his *conductors*,
 had been made use of to draw the forked lightning
 from that portentous cloud, which, with overspread-
 ing ruin, has now burst upon our heads.

Another argument made use of by Mr. Burke, for
 not debating against the Bill, is this : “ It is,” says
 he, “ some time since I have been clearly convinced,
 “ that in the present state of things, all opposition
 “ to any measures proposed by ministers, where the
 “ name

“ name of America appears, is vain and frivolous.” I think so too : but then, it does not therefore follow that opposition is to be laid aside. The question, how far a member of either house can give over his attendance in parliament, because he is out-voted, is a nice question ; and worthy the examination of those who have leisure and abilities for the purpose. My own private opinion is, that no member, *individually*, can do this, consistently with his duty. *Collectively* he may : as the precedent of secession, during the administration of Sir Robert Walpole, shews ; and as reason proves : for it is not to be presumed that a combination to this end can be obtained, without a sufficient foundation for it ; and therefore when it does take place, it is intended, as Mr. Burke elsewhere says, “ as a sort of call of the nation.” But even here, I must not think it justifiable, unless supported on the following grounds. In the first place the secession must be general, that is to say, it must not consist of this or that party only in opposition, but must include the whole minority against the measures that have provoked secession. In the next place, it must be a secession not *sub silentio*, but proclaimed either by Remonstrance on the Journals, or public Address to the People ; and when both these circumstances attend the act, then secession is not only justifiable, but is the most faithful pledge of duty that can be given. I have therefore exceedingly to lament that a secession, such as this is, has not been carried into execution ; and not only on account of the proof that would have been given thereby to the nation of the sincerity of opposition, but because I do verily believe from my soul, that if it had, daring as ministers are and have been, they would not have presumed to have gone the lengths they have done, in the open violation

of the Constitution ; though upheld, as they say they are, by parliament, by the country-gentlemen, and by their long tribe of obsequious addressers.

But to return more directly, to the argument of Mr. Burke, and admitting that " all opposition, " where the name of America appears, is vain and " frivolous," and therefore that Mr. Burke was right in not debating against the Bill, the same reason must hold good in every case of opposition where the same circumstances exist : for not to debate in this instance, and to debate in another, " where the name " of America appears," must be wrong. Both cannot be right. And therefore Mr. Burke's repeated propositions so ably made, and so well supported, for peace, might have been dispensed with. Objections to taxes in aid of this destructive war, were unnecessary. In short, all debate was

" Time mispent, and language misapplied :"

for " all opposition is vain and frivolous, where the " name of America appears."

Having thus stated the reasons, and examined the motives that occasioned *difference in conduct* between Mr. Burke and me ; I shall now, turning over those many leaves of his letter, of which, were I to take any notice, it must be in admiration and in praise, proceed to that part of it wherein our *difference in opinion* prevails. And here, in page 46, Mr. Burke says, " But I do assure you, (and they who know me publicly and privately will bear witness to me,) that if " ever one man lived more zealous than another, for " the supremacy of Parliament, and the rights of this " imperial Crown, it was myself." Now if I cannot

not join with Mr. Burke in this solemn declaration of his, I trust, it will not be therefore imputed to me, that I am less zealous than he is for the rights of the British Legislature; nor if I object to the terms of his proposition shall I be condemned as captious: for to cavil does not belong to me, and more especially about words. But when I see and know, and am persuaded, that these very modes of speech, *supremacy of Parliament, rights of this imperial Crown*, with their kindred others, *unity of Empire, allegiance to the State*, and suchlike high-sounding *sesquipedalia verba*, by becoming, in defiance of their impropriety, the deities of modern invocation, and by operating as incantations to mislead mankind, have done more mischief to the state, even than the sword itself of civil war; be their authority ever so great, I can never subscribe to their use. *Supremacy of Parliament* is a combination of terms unknown to the English polity; and as to *allegiance to the State*, though it be the sanctified phraseology of an Archbishop, it is, like the "Whiggism" he censures, allegiance "run mad."* *Supremacy* is an appendant of the Crown, and so is *allegiance*. The former is the right of the King, (as heretofore it was of the Pope,) in his *ecclesiastical* capacity, the latter in his *temporal*; and there cannot be two rights, in one State, to the same thing.

* Vide the Archbishop of York's Sermon, printed by T. Harrison and S. Brooke in Warwick-lane, p. 22. It had been well if this, or any thing else that the Primate said could have set aside the criminal charges to which his sermon was exposed: but as it was indefensible, so is it matter of great national concern to find such doctrines propagated by the once tutor of the Heir-apparent to the Crown; though it prove of some consolation, as the Earl of Shelburne remarked, that his Majesty, perceiving the evil tendency of such principles, had, in his wisdom, removed him from the tuition of the Prince.

Who

Who ever heard of the oaths of supremacy and of allegiance to the Parliament? And why are they not taken to the Parliament? Because they are due to the King, and not to the Parliament; and it is not fit that the Parliament should invade "the rights of this "imperial Crown." Let each possess its own, and so the constitution will be preserved. That the Parliament is *supreme*, I admit. It is the *supreme court*, or *curia magna* of the Constitution; as the House of Lords is the *supreme court* of Justice, or *dernier resort* of the Law. Both are *supreme*, and yet *supremacy* was never attributed to the House of Lords, but ever, in the language of the constitution, belonged to the King, as the *supreme* Head of the Church. In like manner I admit, that the people are bound in obedience to the laws of Parliament: but this does not therefore infer "allegiance to the State." Allegiance is one thing, obedience another. Allegiance is due to the King, so long as, in his *executive* capacity, he shall protect the rights of the People. Obedience is due to the laws, when founded on the constitution: but when they are *subversive* of the constitution, then disobedience instead of obedience is due; and resistance becomes the law of the land.

These were my reflections consequent, on Mr. Burke's declaration; but my hope was, that although we differed in *words*, in *things* we might yet be agreed. How great then was my disappointment, when instead of seeing this subject unrobed of its gorgeous apparel, and like truth made to appear naked and unadorned, when instead of discussion, which such a declaration seemed necessarily to call for, when instead of reasoning, and of argument, as if afraid of their consequences, I found assertions without the shadow

dow of proof, and precedents importing no authority, but upholding error, substituted in their room. "Many others, indeed," says Mr. Burke, "might be more knowing in the extent, or in the foundation of these rights, I do not pretend to be an antiquary, or a lawyer, or qualified for the chair of professor in metaphysics. I never ventured to put your solid interests upon speculative grounds. My having constantly declined to do so has been attributed to my incapacity for such disquisitions; and I am inclined to believe it is partly the cause. I never shall be ashamed to confess, that where I am ignorant, I am diffident. I am indeed not very solicitous to clear myself of this imputed incapacity; because men, even less conversant than I am, in this kind of subtilties, and placed in stations to which I ought not to aspire, have, by the mere force of civil discretion, often conducted the affairs of great nations with distinguished felicity and glory." This may be very true, but surely it is not very satisfactory. To be *more* zealous than any one man living "for the supremacy of parliament, and the rights of this imperial crown," and *less* knowing than others, "in the extent and foundation of these rights," is to profess more of implicit faith and enthusiasm, than I confess, I expected to have met with, at least now adays, in *civil* concerns. Of fanatics in the church I knew there were still many to be found, but a state fanatic, I thought, was a *phenomenon* in politics not of modern appearance. If indeed our parliaments were, as our Scottish race of Kings held themselves to be, God's vicegerents, and governed the state *de jure divino*; then such a degree of belief had been only correspondent to the occasion of it; but parliaments have ever been the works of men's

men's hands, as, thank God, we now know that our kings are ; or otherwise we had not had our present most gracious Majesty on this throne, nor yet that additional solemn contract between king and people, I mean the *act of settlement*, for the eternal security, as I trust, of those rights of the subject which are intrusted to the executive power. Again : why should a man be either antiquarian, lawyer, or metaphysician, or what need is there of speculation, to know " the extent and foundation of these rights ? " The rights of Englishmen want no such professional authority for their support : neither are they mere abstract terms, the *entia rationis*, or creatures of the understanding ; but are, for our knowledge, written in our hearts, with the blood of our ancestors. But " the " affairs of great nations are often conducted with " distinguished felicity and glory by the mere force " of civil discretion." What ! are the rights of Englishmen to be held at the *discretion* of ministers ? Is *civil discretion* the rule of our government ? Wherein does *civil discretion* differ from *will*, the law of tyrants ? And will any minister of this country say, " I am not " conversant in this kind of subtilties, the extent and " foundation of these rights," and therefore will govern by this unconditional power, the mere force of *civil discretion* ? This can never be : but I have said that I found assertions without the shadow of proof, and precedents importing no authority, but upholding error ; and this obliges me to be more circumstantial. The subject is a deep one ; and the consideration of it the most interesting of any that ever fell under political contemplation. It is no less than to know whether our *civil* existence has any *real* foundation ; or whether, as it is said of the sea, it be without a bottom. Perhaps I may be lost in the depths
of

of research : but if I am, I carry this consolation with me, that I sink in the cause of truth. I have this hope, however, of preservation about me, that I shall not dive into mysteries, nor yet venture among the quicksands of metaphysical abstractions. The constitution of my country is the ground on which I wish to stand, and if I gain this shore, my safety present will reward the dangers past.

Mr. Burke having given us his creed in the supremacy of parliament, next applies its *unlimited* power to and over the American Colonies ; and then tells us what the supremacy of parliament is in England. I shall consider the last first, namely the supremacy of Parliament in England, as a major proposition in which the minor is contained. He says (in order to shew “ the compleatness of the legislative authority “ of parliament *over this kingdom*,”) that if any thing “ can be supposed out of the power of human legislature, is religion : I admit, however, that the “ established religion of this country has been three or “ four times altered by act of parliament ; and therefore that a statute binds even in that case.” This is conclusive as to Mr. Burke’s idea both with respect to the *unlimited right* as well as the *unlimited power* of parliament : but whilst he is sharp even to a point for the *general unlimited right* of parliament, he adduces some cases to blunt the edge of its power *over this kingdom*. He says, “ But we may safely affirm, that notwithstanding this apparent omnipotence, it would “ be *now* found as impossible for king and parliament “ to change the established religion of this country, as “ it was to King James alone, when he attempted to “ make such an alteration without a parliament.” Further : “ I see no abstract reason, which can be “ given,

“ given, why the same power that made and repeal-
 “ ed the high-commission court and the star-chamber
 “ might not revive them again : but the madness
 “ would be as unquestionable as the competence * of
 “ that parliament which should make such attempts.”
 Furthermore : “ The king’s negative to bills is one
 “ of the most indisputed of the royal prerogatives,
 “ and it extends to all cases whatsoever ; but the ex-
 “ ercise is wisely foreborne.” Moreover : “ We
 “ know that the convocation of the clergy had for-
 “ merly been called, and sat with nearly as much
 “ regularity to business as parliament itself. It is now
 “ called for form only.” These then are what I call
 precedents without authority, but upholding error :
 for distinguishing, as must be done, between *right*
 and *power*, parliament cannot exercise a *power* with-
 out a *right* to that *power* ; or if it does, it is an *usurpa-*
tion of Power, which sooner or later never fails of red-
 dress. Precedents therefore of acts of parliament,
 repugnant to the fundamental principles of the con-
 stitution, are no proofs of the supremacy or omni-
 potency of parliament, but instances only of the
 abuse of parliament ; “ and as no government,” says
 Machiavel, “ can be of long duration, which, by
 “ the original formation of its constitution, is not
 “ frequently renewed or drawn back to its first prin-
 “ ciples,” so whenever this happens to us, as it often
 has done, and, I trust, is again not afar off from
 us, these precedents, like so many clouds dis-
 persed, only serve to shew, that although they may
 darken the face of the constitution, they can never
 extinguish its light.

* It is presumed that *incompetence* is here meant, and that *competence* is an error of the press.



But a word or two more particularly of these precedents. Much stress has been laid on the alterations that have been made in the established religion, in order to shew the right of Parliament to omnipotency: it is the doctrine of Sir William Blackstone*: but as the most able chymist cannot extract *that* from any given thing, *which* does not exist in its nature, so is this precedent, for this reason, by no means a case in point. In the first place, religion has nothing to do with the *civil* rights of the State. It is set apart from them, and belongs to the Church†. The *civil* rights of the State are of a *temporal* nature: they are *positive*, they are *general*, affecting every member of the community equally and alike. Religion is of a *spiritual* nature: it is a *negative* duty, and not a *positive* right: it is *not general*, but varies according to men's consciences: it is the subject of *toleration*, for no laws can have power over men's minds. What Act of Parliament can make me believe that *three* is *one*, or *one* is *three*, if I do not chuse to believe it? Or that my salvation in the next world is to be obtained by the belief of 39 articles in this? The *established* religion, therefore, is no more than that *dress* which the *State tailors* have provided for Religion to go to *court* in; and the same *tailors* that made this *dress*, can *alter* it, as we have seen, and as the fashion of the times changes.

* Vide his Commentaries, vol. i. p. 161.

† I am aware how much I here differ from the very able Prelate, who is for harnessing Church and State together, like coach and horses, that He as one of the drivers may enjoy the smack of the whip; a smack which he cannot forget, and which he gave me reason to remember when I was at Westminster school: but as I am now out of his clutches, so I hope I am out of his books too, at least such as are a-kin to his political sermons. Vide Archbishop of York's Sermon, p. 10.

But

But if this was not the case with the established religion, how, in the next place, does its alteration shew the right of Parliament to omnipotency? What effect has it had on the constitution? Are we *less* free now, either in Church or State, than we were before the Reformation? I should imagine that we are *more* free in both, and if so freedom being the first principle of the constitution, the *power* of Parliament to alter the *established* religion has been but correspondent to its *right*; and therefore, whilst it is no proof of the supremacy of Parliament, I should not be sorry to see a little more alteration of it. I think it may still be *amended*, without offence to the people, or injury to the constitution; nay even with satisfaction to some of the clergy themselves. The second precedent is that of the High Commission Court, and the Star Chamber; which is in direct proof of my argument: for they, being usurpations of *power*, and abuses of the *right* of Parliament, have been dissolved; and therefore I agree with Mr. Burke that it would be madness to revive them, and for the reason he gives too, to wit, "the incompetency of "Parliament:" though if the power of Parliament be *unlimited*, is not the *incompetency* of Parliament a position somewhat paradoxical? The third precedent is, "the King's negative to Bills, which is wisely forborne." This is the forbearance of a *known right* to a *power* vested by the constitution in the Crown, and not the exercise of a power *unknown* to the constitution. As it therefore shews, that, even where there is a manifest *power*, that *power* is limited; so it proves, of course, that where there is no manifest *power*, there can be no *right* to *unlimited power*. The last precedent is that concerning the Convocation of the Clergy; and to this, what I have said on the head

of the *established* religion, inasmuch as *ecclesiastical* matters have nothing to do with *civil* concerns, may here be applied. But I do not recollect that, in bringing the Convocation of the Clergy to its present *formal* state only, there was any exertion of power of any kind to this end. If I remember aright it was a bargain. It was agreed that, on their Convocations becoming merely passive, the beneficed Clergy should pay no further subsidies to the government, as they used to do in Convocation; and that they should be *represented* in Parliament, by being allowed to vote at the elections for Knights of the Shire: for before this they were not *represented* in Parliament, but in their own Convocations; and therefore Parliament had no *right* to tax them, nor were they taxed by Parliament, notwithstanding its *unlimited power*, and “the compleatness of its legislative authority over this kingdom.”

If this then be the result of these precedents, and the State of what has been offered by Mr. Burke for this *arbitrary right* in Parliament, extending even to Religion itself, and whose *power* is limited *only* by “the mere force of civil discretion;” is there nothing further that may be said *against* this *right*? I shall consider. There is nothing so much talked of, and yet nothing so little understood, as the *English Constitution*. Every man quotes it, and upon every occasion too: but few know where to find it. If one enquire after it, an Act of Parliament is produced. If you ask what it is, you are told it is the *Law*. Strange mistake! the *Constitution* and the *Law* are not the same. They differ and in what manner I will endeavour to point out. In the great *machine* of State there are found three *principal powers*, with a variety of others subordinate

subordinate to them; particularly the Prerogative of the Crown: which is a *power* there vested not to counteract the *higher powers*, but, if at any time there should be occasion, to supply their deficiencies. The first of these *principal Powers*, is the *Power* of the *People*; the second, the *Power* of the *Constitution*; the third, the *Power* of the *Law*. Now the *Power* of the *People* is first, because, without *People*, there could be neither *Constitution* nor *Law*. The *Power* of the *Constitution* is second, for it is the immediate effect of this first cause; and if the *People* and the *Constitution* make the first and the second *Power* there is no need to prove that the *Law* is the third *Power* of the State. It follows in the order I have laid down. As from the *People* then is derived the *Constitution*, so from the *Constitution* is derived the *Law*; the *Constitution* and the *Law* being, in a due course of lineal consanguinity, the descendants of the *People*.

But now I shall be asked, what is this *Constitution*, and what is this *Law*? I answer, that by pointing out their relations, their differences too are marked. But this is not enough: definition is necessary, and therefore, as a definition of the name I would say, that *Constitution* signified *Compact*, and was the same with *public or political Law*; and that *Law*, as here meant, was the *municipal or civil Law* of the State: but as a definition of the thing, perhaps both may best appear as derived the one from the other. I define *Constitution* then to be, those *Agreements* entered into, those *Rights* determined upon, and those *Forms* prescribed; by and between the Members of any Society in the first settlement of their union, and in the frame and mode of their Government; and is the *Genus* whereof the *municipal or civil Law* of such established Community is the *Species*: the former, ascertaining the reciprocal

reciprocal duties, or several relations subsisting betwixt the *governors and governed*; the *latter*, maintaining the rights and adjusting the differences arising betwixt individuals, as parts of the same whole. And this I take to be the true distinction, and real difference between the *Constitution* and the *Law* of England. But this is matter of *Theory* only. It is the *passive* state of Government, and Government must be *active*. *Practice* therefore is to be superadded to this *Theory*; and hence the origin of *Parliaments*. What then are *Parliaments*? *Parliaments* make the *formal*; as *Rights* do the *substantial*, part of the Constitution; and are the Deputies, the Agents, or Appointees of the People, entrusted by them with the Powers of *Legislation*, for the purpose of preserving (and not of destroying) the established Rights of the Constitution. But what are the established Rights of the Constitution? In detail, they are multifarious, and many: but reduced to their first principles, they are these, "*Security of Life, Liberty, Property, and Freedom in Trade.*" Such are the great Outlines of the *English Constitution*, the short history, or abstract of that *original Compact*, which is the bond or cement of our civil union, and which forms, in particular, the relations that exist betwixt the *legislative Power* of the State, the *People*. But there is still another relation to be considered. The *legislative Power* of the State, must receive its force from an *executive Power*. This *executive Power* is lodged in the *Crown*, from whence a relation arises betwixt the *Crown* and *people*; and is called "the *Contract between King and People.*" As *Compact* then is that *Agreement* of the *People* with the *legislative Power*, or among themselves, concerning their *same Rights*; so *Contract* is that *Bargain* of the *People* with the *executive Power* concerning their *different*

rent Rights *. But here it will be said, How is this known, and where is this to be found? I reply, As well in the reason of the things themselves, and our own experience, as in the letter and spirit of our Charters: for instance, in *Magna Charta*, which is not only declaratory of the *original Compact*, or fundamental Rights of the People, but is *itself* that *solemn Contract*, which was had between King and People, for the protection of those Rights; and therefore, as such, proves *quod erat demonstrandum*.

* Writers upon this subject have confounded the two terms, *Compact* and *Contract* together; making them to signify one and the same thing, though *really* different. *Compact* is an Agreement entered into without any other consideration, than that of the plighted faith of the parties to the articles agreed upon: for the articles being *general*, it is equally the interest of every *individual* to observe them without any additional obligation; and such is the *original Compact*, or *Constitution* of this country. But *Contract* is a *Bargain*, with a *condition* annexed thereto, that demands a *quid pro quo*; and such is the "Contract between King and People:" for the *executive Power* being lodged in the *Crown*, the *King* may suffer the Laws to sleep, or pervert them "from their right use to their worst abuse," which making the articles of this *Contract* *not general*, calls for different covenants; and therefore the King, at his coronation, takes an oath to protect the Rights of the People; and the People, in return, owe, and may be called upon to swear, Allegiance to the King. It may be further observed, that as it was not to be supposed that Parliaments, whose rights were precisely the same with those of the People, could possibly enact Laws subversive of those Rights, so the *original Compact* seeming to require no other sanction, no other agreement between the legislative Power and the People was ever thought of: but now Corruption, that self-devouring monster of the State, making fresh covenants necessary, it is to be hoped, that the same *explicit, unequivocal, express Contract*, which exists between the King and People, will soon, very soon, be made to subsist between the Parliament and People. It was the doctrine of *unlimited Power* in the Crown that obtained the former; it is the now new and more dangerous doctrine of *unlimited Power* in Parliament that must Procure the latter.

But

But now I may be told, that although I have made a distinction between the *Constitution* and the *Law* of England, I have cited *Magna Charta*, which is an act of Parliament, and consequently the Law of England, as for the *Constitution* of England. The objection is specious only, for it is groundless. In the first place, it is not true that *Magna Charta* is an Act of Parliament; and for this reason: that it was obtained in the field of battle, with sword in hand, in Runing-Mead, between Windsor and Staines, where the *People* had pitched their tents, and where, as history further informs us, "King John and his adherents appeared to be an inconsiderable number, but the Lords and Commons filled the country."

It is therefore true, that *Magna Charta* was the Act of the People *at large*, and not of the Legislature *alone*. Besides: it is proved by Acts of Parliament, that it is not an Act of Parliament; and that Parliament (*unlimited* as its power is now said to be) has no power over it at all: for it is declared by the statute of the 25th of Edw. I. that *Magna Charta* was obtained by the *common Assent of all the Realm*, and that it was to be received as the *Folcright*, or common Law of the Land. And by the 43d of Edw. III. all statutes made against *Magna Charta* are declared to be void: so that whilst *Magna Charta* proves the *Constitution* to be anterior to the Law, Acts of Parliament shew that it is not subject to the Law, nor under the power of Parliament. But, in the next place, admitting *Magna Charta* to be an Act of Parliament, still the objection remains without foundation. For *Magna Charta*, being not *enactive* of new Rights, but, as I have said before, *declaratory* only of those old Rights of the People, some of which are of Saxon ancestry, others coeval with the first form of British Government,

Government, is a Law only in proof of the Constitution; and therefore supports my position, that the *Constitution* and the *Law* are not the same.

But there is still another objection, which I must anticipate in order to remove. It may be objected, that if (as I have shewn) *the People be made the source of all power in the State*, in what manner is such an idea to be reconciled with the doctrine, that, “Government certainly is an Institution of divine Authority?” * for these (upon another occasion) are the words of Mr. Burke; though, he adds, that its *Forms* and the *Persons* who administer it, all originate from the People. What a pity that an “Institution of divine Authority” should ever be found in the hands of *Devils*, as our Government sometimes unhappily is! But I do not mean to enter into the merits of this doctrine. Indeed I am bound not to do so: for I have said, that I will not dive into mysteries, lest I be drowned; and I will keep my word. But as this said mode of attributing to *natural* effects *supernatural* causes, or mixing Church and State together, has already done a great deal of mischief to the community; as I perceive that the *divine Right* of Parliaments, like the *divine Right* of Kings, to do what is *wrong*, with its concomitant train, *passive obedience* and *non-resistance*, is now from the

“Pulpit, drum ecclesiastic,

“That’s beat with fist, instead of a stick,”

sounding forth in the ears of the † People; as I am
content

* Vid. *Thoughts on the Cause of the present Discontents*, fifth edit. p. 67.

† See a Sermon preached before the University of Oxford, on Friday, December 13, 1776, being the day appointed by proclamation

content to judge of things *past* by the *present*, leaving to others all better rules of judging; inasmuch as example goes before precept; so the present state of America affording not only much notable information on this head, but serving to illustrate the whole of what has been here said on the subject of Government, I shall, with some advantage I trust, and in as few words as I can, make use of the instance.

America, having declared itself independent of Great-Britain, returned to that state of Nature, or state of Society, where Government was to be insti-

mation for a general Fast. By Myles Cooper, LL. D. President of King's College, New York, and Fellow of Queen's College, Oxford. Published at the request of the Vice-Chancellor and Heads of Houses, and printed at the Clarendon press. This Doctor says, p. 12. "It is difficult indeed to assign any " reasons " that will justify the Rebellion of Subjects against the sovereign " Authority." "Submission to the higher Powers" is enjoined at " least upon Christians, under the severest penalty. But were " Christianity altogether out of the question, yet the insurrec- " tion of subjects against their rightful Governors, is condemn- " ed by those Laws which are fundamental to society." He says too, p. 22. "When men's principles are wrong, their practices " will seldom be right. When they suppose those Powers to be " derived solely from the People, which are ordained of God, " and their heads are filled with ideas of original Compacts " *which never existed*, and which are always explained so as to " answer their present occasions; no wonder that they confound " the duties of rulers and subjects, and are perpetually prompt- " ed to dictate where it is their business to obey. When once " they conceive the *governed* to be superior to the *governors*, " and that they may set up their *pretended natural Rights* in op- " position to the *positive Laws* of the State, they will naturally " proceed to "despise dominion and speak evil of dignities," and " to open a door for anarchy, confusion, and every evil work to " enter." What *more* did Sacheverel say? And yet Sacheverel was impeached, whilst Doctor Cooper may expect preferment.

tuted;

tuted ; and being so circumstanced, whilst it proceeded to form itself into separate Commonwealths, or States, each Commonwealth or State provided a Constitution or Form of Government of its own ; which, although differing in mode and manner, agreed in substance and effect. The Precedent therefore of one Constitution answering for every other, I shall here avail myself of such extracts from the Constitution of *the State of Massachusetts*, as are necessary to my purpose. This Constitution then, or Form of civil Government, consists of forty-three Articles, and is entitled, “ An Act of the *General Convention* of the Commonwealth, or State of Massachusetts, declaring the same to be a free State, and independent of Great-Britain, and establishing a new Constitution and Form of civil Government ; which *General Convention* was elected by *the whole People* for this *sole purpose*, &c.” It next recites those (but too much to be lamented) arbitrary and despotic measures of this country, which occasioned the Declaration of Independency ; and after this, proceeds to say, “ The antient Government of this Colony being thus *totally dissolved*, and the People driven into a *State of Nature*, it becomes their indispensable duty, and what self-preservation requires, to declare themselves independent of Great-Britain, and to establish such a constitution and form of civil Government, as to them appears best calculated to promote their greatest possible happiness :” “ And whereas it is absolutely necessary for the welfare and safety of the inhabitants of this Commonwealth, that a just and permanent Constitution and Form of civil Government should be established as soon as possible, *derived from and founded on the authority of the People only, in whom is the origin of all governmental Power*, and who have

“ at

“ at all times a right, by *common consent* (whenever
 “ the great end of Government, the general good is
 “ not obtained) to alter and change their Constituti-
 “ on and Form of Government, in such manner as
 “ may best promote the safety and happiness of the
 “ whole.”

“ We, therefore, the Representatives of the Free-
 “ men of Massachusetts, in *general Convention* met,
 “ for the *express purpose* of framing such a Constitu-
 “ tion and Form of Government; gratefully ac-
 “ knowledging the goodness of the supreme Gover-
 “ nor of all, in permitting us peaceably, and by
 “ *common consent*, deliberately to form such rules, as we
 “ shall judge best adapted for governing this Com-
 “ monwealth in justice and righteousness; and be-
 “ ing fully convinced that it is our indispensable du-
 “ ty to establish, to the utmost of our power, such
 “ *original principles* of civil Government, as will best
 “ promote the general happiness of the People, do,
 “ by virtue of the authority vested in us by our
 “ Constituents, declare, enact, and establish the fol-
 “ lowing Constitution, and Form of civil Govern-
 “ ment, for this Commonwealth, to be and remain
 “ in full force therein, from and after the second
 “ Wednesday in ———, and *forever thereafter* to
 “ *remain unaltered*, except in such articles as shall
 “ hereafter, on new circumstances arising, or on ex-
 “ perience, be found to require alteration; and
 “ which shall, *by the like authority of the People, con-*
 “ *vened for that sole purpose*, be altered, for the more
 “ effectual obtaining and securing the great end and
 “ design of all good Government, *the Good of the*
 “ *People.*”

“ Be

“ Be it therefore declared and enacted by the *general Convention* of this Commonwealth, assembled *for the sole purpose* of declaring and enacting Independence, and establishing a new Constitution and Form of civil Government, and by the authority of the same, it is hereby declared and enacted, as in the following general articles, viz.

1. “ That this Colony is, and of right ought to be, and for ever hereafter shall, by the favour of all-gracious Heaven, be a free State, and absolutely independent of the Crown and Government of Great-Britain; and shall be styled, *THE COMMONWEALTH, OR STATE OF MASSACHUSETTS.*”

5. “ That this declaration of the general, fundamental and essential Rights of the People of this Commonwealth, shall, *for ever hereafter*, be considered as the general fundamental of the said new Constitution and Form of Government; and every order, law, and statute, that *shall hereafter be made by the general Court of this Commonwealth*, shall conform to the spirit and plain simple meaning and intention of these general fundamentals; and all and every order, law, and statute, that may hereafter happen to be made, and shall be found contrary thereto, shall be null and void, and have no effect, and be immediately repealed: and no alteration in these general fundamentals shall hereafter be made, but only by the immediate consent of the good People of this Commonwealth at large, or their deputies, chosen for that special purpose.”

6. “ That all men are born equally free and independent, and *their Maker has left them free liberty to set up such governments as best please themselves.*”
 “ That Magistrates were set up for the good of Nations, not nations for the honour and glory of Magistrates.”

"gistrates." That the right and power of Magistrates in every country, was that which the Laws of that country made it to be." And, " That usurpation gives no right to govern."

7. " That all men have a natural and unalienable right to worship God according to the dictates of their own consciences, and to enjoy a full and free liberty therein; provided that they, under pretence of Religion, do not attempt to subvert the Constitution and Form of Government of this State, &c."

Here then is that in *esse*, what Dr. Cooper tells us " never existed," *an original Compact*. A Compact too with *Powers*, (which, according to him, " are ordained of God,") *solely* derived from the People; and, the *governed* being superior to the *governors*, with natural Rights, " pretended," as he says they are, " set up in opposition to the positive Law of the State." Such is this Compact, and such, I presume, being all other *original* Compacts in their first institution, it is no wonder that their existence should be denied; inasmuch as they are the sovereign antidotes of those political poisons, *Priest-Craft*, and *State-Craft*, whose objects are dominion over " the Beasts of the People *."

* Such is Doctor Cooper's *humane* appellation of those persons in America, who plundered, as he says, the Members of the Church of England, Him, I suppose, among the rest, and others, of their property; adding, " without any means of present redress, though it is to be hoped not without a prospect of future retribution." Methinks the Doctor, having received a slap on one cheek, in the true spirit of a Christian, should have turned the other, and not have looked forward to a prospect of plundering the Americans of their property, because they had plundered him of his. However, whenever the Americans shall come to this country to deprive us of our *Liberties*, I will readily join the Doctor in his idea of Retribution.

Here

Here too is an "institution of Government," but where "the divine authority" of it is, who can discover? Indeed, in a century more, for we are already giving up *things* for *words*, *sense* for *sound*, and from the *golden* falling back into the *iron* age again, such notions of Government may be well received. Tradition will inform posterity that the Governments of America were instituted *de Jure divino*, and not without some reason on their side; inasmuch as the more *natural* any Government is, in my opinion the more *divine* it is: but now that we are witnesses to their *institution*, we know, we see, and we find, that they are instituted *de jure humano*.

The next observation to be made is the affinity of these Governments to that of our own country. They are founded on original Compact, and so is ours. The lines of distinction betwixt the People, the Constitution, and the Law, are marked there as they are drawn here. The Constitution is derived from the People, and the Law from the Constitution. The law cannot alter the Constitution: for all and every Law and Statute that are, by the *general Courts*, (equal to our Parliaments,) made contrary thereto, are null and void: neither is the Constitution *alterable*, but by general Conventions of the People *at large*, held *expressly* and *solely* for that purpose.

If now then I should profess to believe that there is no more of *divine authority* in the Government of England, than in the Governments of America, a sample of which has been produced; and that the former is derived from the same powers, by the same means, and to the same end, namely, the *good of the whole*, as the latter: I hope I shall not be therefore accounted an *Infidel* by the *Church*, nor an *unworthy Member of Society* by the *State*. I must hope too, that if our *Parliaments*, who are the *Trustees* of the People, and the
Guardians

Guardians of their rights, (for they are no more, and I am one of its members) should ever attempt to destroy those rights, that, as they will well deserve the fate, so may they feel all that vengeance which the offended *Majesty* of an injured People can bring down on their heads. Parliaments who will support the Constitution, will be supported by the People, and have nothing to fear; but those who will subvert the Constitution, let them tremble, as one man, even as Charles the first did, who lost his head in such an attempt; and which, as Lord Chesterfield tells us, "if he had not lost, we had certainly lost our liberties."

Having thus gone over the constitutional ground of this country, and taken a comparative view of the foundation upon which its Government is super-structed, the inference to be drawn from thence is this; that if the Government be as I have stated it to be, and as I shall hold it to be, till the contrary be proved, the *right to unlimited power* contended for in Parliament, cannot, in common apprehension, there exist. For although Mr. Burke asserts (and I mention this, because I wish to state, and not to mis-state his meaning, and if I do, I trust he will impute it to the want of comprehension, and not to any intention in me) "that Legislators ought to do what Lawyers cannot; for they have *no other* rules to bind them but the great principles of reason and equity, and the general sense of mankind;" and although in arbitrary countries this is true, for there the People being *divested* of all power, and both the legislative and executive authority *vested solely* in the Prince, he may have no other rules than these to bind *him*; yet in free countries the case is different. In England, "the legislative," says Lord Bolingbroke, "is a *supreme*, and may be called, in one sense, an *absolute*, but in none an *arbitrary* power." "It is *limited*," says

says Mr. Locke, "to the public good of the Society." I say, it is bound by the rules of the Constitution, for the rules of the Constitution are to the Parliament, what the Law is to the Judges. The People make the Constitution, the Parliaments make the Law; and as the Judges are bound to determine according to the Law of the land, so are Parliaments bound to enact Laws according to the rules of the Constitution; and not according to *their own* principles of reason and equity, and *what they call* the general sense of mankind: for these *may* differ with the principles of the Constitution, as we know they *have* done; and therefore arises the necessity of asserting the controul of the Constitution over the Law and the Parliament.

But of this power of the Constitution over the legislative authority Mr. Burke has himself given the most pointed case. He says, "before this Act, (that "is, before the Act for the partial suspension of the "Habeas Corpus,) every man putting his foot on "English ground, every stranger owing only a local "and temporary allegiance, even a Negro slave, who "had been sold in the Colonies, *and under an Act of "Parliament*, became as free as every other man who "breathed the same air with him." What is it then that, setting this Act of Parliament at defiance, manumits the Negroe-slave so soon as he puts his foot on English ground; let it not be said that it is *the pure air* of this foggy island, that can work these wonderful wonders, for these are the half-witted sayings of lawyers that would be orators, and fit only for the *lullabies* of nurses, or the *sing-songs* of children. Let it not be said that the Act is local, for it is not local. The Act alluded to is the 5th of G. II. ch. 27. (but there are many other Acts to the same effect,) and it vests a clear and unconditional property, confined no where, but absolute every where, in the owner to his purchas-

ed slave ; and yet when this owner shall bring his slave to this country, he shall lose his ownership in him ; though he hold him under an act of Parliament. No : it is neither the one, nor the other, that gives occasion to this manumission. It is the Constitution of England, which maintaining *liberty*, and annihilating *slavery*, renders this act of Parliament a *tabula rasa*, a blank parchment, without operation, without force, without effect. *It is that Constitution which is now resisting the rebellion of Acts of Parliament against it.* In short, my idea of this Government, to speak as a lawyer would do, is, that *Parliaments*, as I have said before, are the trustees of the People, the *Constitution* the deed of trust, wherein they stand seized to uses only ; and these *uses* being named, they cannot depart from them ; but for their due performance are accountable to those by whose conveyance the trust was made. The *right* is therefore *fiduciary*, the *power limited*. Or as a mathematician would say, more in the road of demonstration ; the *Constitution* is a *Circle*, the *Laws* the *Radii* of that *Circle*, drawn on its surface with the pen of Parliament, and it is the known quality of a circle, that its *radii* cannot exceed its *circumference*, whilst the People, like the *compasses*, are fixed in the center, and describe the *circle*. These, I say, are my ideas of this Government, that is, of the whole political system of this country, for this is what I would mean by Government, and I hope that they are just and true ; or otherwise, dreadful indeed is the prospect before us ! For if Parliaments have the right to alter the “ established religion of the land,” and “ if any thing “ can be supposed out of the power of human legislature, it is religion ;” if they are bound by no other rules than “ the great principles of reason and equity, “ and the general sense of mankind,” and not by the more determined principles of the Constitution, nor
subject

subject to the controul of the People ; if, by the influence of corruption they are become “ the Masters instead of the Servants,” of their Constituents, looking *down* on the People, and *up* to the Court for honours and preferments, and granting money that they may receive it themselves ; I say, if these things be so, and are they not said to be so ? where is the difference betwixt a *free* and an *arbitrary* country ? where the difference between the despotism of the King of France, and the despotism of the Parliament of England ? And what is this, but to erect an *Aristocratic* tyranny in the State, a many-headed *Leviathan*, deplorable and to be deplored, dangerous and destructive, in proportion to the numbers of which it consists.

Hitherto I have considered the *Supremacy* of Parliament, or its *right to unlimited Power* in and over *this Kingdom* ; and if I have shewn, that no such Power can exist in Parliament from the very nature of its institution, for it is a solecism in politics, and an absurdity in terms, to say, that in a *limited* Government, there can be *unlimited* Power, the application of this power over the Colonies must consequently fall to the ground ; and with it the occasion of any further reasoning upon the subject. But as Mr. Burke has made some assertions respecting this “ unlimited legislative power over the Colonies,” that are not only new and different from every other writer, but new and different from himself too, I hope, I shall be excused the trespass of a page or two more, in the further consideration of this matter.

Mr. Burke says, “ When I first came into a public trust, I found your Parliament in possession of an “ *unlimited legislative Power* over the Colonies. I could “ not open the Statute book without seeing the actual “ exercise of it, more or less, *in all cases whatsoever*.” These then are what I have called assertions without

the shadow of proof, or more properly assertions with the most convincing proofs of their being without foundation; for the proofs are taken from Mr. Burke himself. Here Mr. Burke says, "I could not open the " Statute-book without seeing the actual exercise of " this *unlimited Power* over the Colonies *in all cases* " *whatsoever*:" but attend to what Mr. Burke says in his speech on American Taxation, April the 19th, 1774, p. 40. 3d edit. printed for J. Dodsley, in Pallmall. There he says, " This is *certainly* true; that no Act a- " vowedly for the purpose of revenue, and with the " ordinary title and recital taken together, is found in " the *Statute-book* until the year 1764. All before " this period stood on *commercial* regulation and ref- " traint;" and to prove this, that is, that a " Parlia- " mentary inland Taxation" was not to be found in the *Statute-book* before the year 1764, is the business of this entire page: but as the extract would be too tedious for this place, so whilst I refer the Reader to the page itself, I will take the liberty of recommending to his perusal also the whole Speech, as the most excellent oration. If then America was not " taxed " *internally* for the purpose of revenue before the year " 1764, but all before this period stood on *commer- " cial* regulation," here is a case of Mr. Burke's own former shewing, that contradicts the case he now puts, of an " actual exercise of unlimited legislative " authority over the Colonies *in all cases whatsoever*:" for if Mr. Burke could not find the exercise of this Power, that is, of internal Taxation over the Colonies for the purpose of revenue in the *Statute-book*, before the year 1764, no such power having been ever exercised, he could not find the exercise of *unlimited Power* over the Colonies *in all cases whatsoever*, before the year 1764; and if he did not *then* find it, he could not find it *after* the year 1764: for the first instance of the
exercise

exercise of this Power after the year 1764, was that of the Stamp-Act; and this Act, as soon as it passed, was resisted, and being resisted, it was repealed, and being repealed, it could afford no proof of the possession of the Power. And yet Mr. Burke adds, "this possession passed with me for a title." But if, as has been said, Parliament was not possessed of the power of internal taxation over the Colonies before the year 1764, no title to unlimited legislative Power *in all cases whatsoever*, before this time, could be founded on possession; for here is a manifest exception to this possession in the case of an *inland* Taxation; and from the year 1764, no title can be derived from possession, for the title has been always disputed, and possession never obtained. So far then Mr. Burke is new and different from himself. In what follows, he is new and different from others.

No one has ever before contended as I know of, for the Right of Parliament to tax America, without the annexed idea of America being represented in Parliament. The idle phantom, the Cock-lane ghost, of *virtual* Representation, has been ever conjured up, as the *ego sum ille*, of this vile deception. But Mr. Burke has asserted, has maintained, and has proved, that America is not represented in Parliament, and yet insists for the unlimited right in Parliament to bind America in all cases whatsoever. He says, "If any thing can be drawn from such examples by a parity of the case, it is to shew, how deep their crime, and how heavy their punishment will be, who shall at any time dare to resist a distant Power, actually disposing of their property, *without their voice or consent to the disposition*; and overturning their Franchises without charge or hearing *."

* See also Mr. Burke's Conciliatory Propositions.

Here then is his assertion, that America is not represented in Parliament ; and his assertion that Parliament has an *unlimited* legislative Power over America *in all cases whatsoever*, has been already stated ; which is a position as unaccountable to me, as it is new. But let me see if such a position is defensible, and whether a question or two may not serve as an answer thereto. The first question I shall propose is, whether Representation in order to taxation be not an *hereditary* indispensable privilege of the British Subject ? The next question is, whether the Americans are British Subjects, or not ? for if they are not British Subjects, Great Britain has nothing to do with them, no more than France, or Spain, or any other country has : and again, if they are British Subjects, and Representation in order to taxation is the *hereditary* indispensable privilege of a British Subject, Representation in order to Taxation must be the *hereditary* indispensable privilege of the Americans, as British Subjects. From whence then can the Right to Parliament be derived of unlimited legislative power over the Subjects of Great Britain, *in all cases whatsoever*, without Representation in Parliament, which the Americans do not possess, as Mr. Burke has shewn ; and which, in order to Taxation, is the *hereditary* indispensable privilege of British Subjects ? I presume it cannot be derived from the Constitution ; for no man will assert, that the Constitution gives a right to Parliament to levy Taxes upon British Subjects without Representation ; and if the Constitution does not give this Right, the claim of it in Parliament must be *unconstitutional* ; which naturally brings me to the consideration of the *declaratory Act*, as falling under this point of view. Mr. Burke has proved that America is not represented ; every wise man says the same ; and it is only *folly the last* that would assert the contrary. The declaratory Act declares,

declares, and Mr. Burke supports the declaration, that this country has a right to bind America *in all cases whatsoever*; and of course to tax America, though not represented. Upon these principles, is it possible to maintain this Act? It has no foundation. It rests not upon the Constitution. It is subversive of the Constitution. It has not the fundamental requisites of a declaratory Law. No Law declaratory of rights was ever before made, or ought to have been made, whose recital did not express the sources from whence those Rights are derived; whether *direct* from the Constitution, or *indirect* from other Acts of Parliament founded on the Constitution, or from general Customs, or particular Customs, which make the common Law of the Land. Look from *Magna Charta*, through every declaratory law, down to the *Act of Settlement*, and it will be found that they are, every one of them, *in perpetuum rei testimonium*, or testimonials only of what had before existed: But this Law is declaratory, not only of what never existed *before*, but of a right against which *common usage*, which is the *common Law of the Land*, has been in direct opposition. I say, in direct opposition, for America, from beyond the memory of man, nay, even from the very first date of its civil existence, to the era of this reign, has been uninterruptedly used to the internal taxation of itself.

This Law therefore must be repealed. As it was enacted for the dignity of this country, so for justice sake, which is the true dignity of this country, let it now be repealed. It is against Right, and usurped Power cannot uphold it. It is true the motives that brought it into being were intentionally upright, but with the patronage of the Author of those motives, the motives themselves ceased; and of the Act since, the *double Cabinet*, as Mr. Burke calls them, has made an infamous use. They knew not where to look for
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the Right of Taxation. They found it in this Act, and have so tyrannized under it, that America has now stamped its foot upon it, and will never stir a step until "this tyranny be overpast." Every island in the West-Indies looks upon it with terror. All Ireland sees it with a jealous eye: For who is the Casuist that can discriminate between a British parliamentary Right to tax America, and a British parliamentary Right to tax Ireland? The case is the same. The Right has been avowed in Parliament, and add to the 6. Geo. 1. ch. 5. or Irish declaratory Act, the words only, "*in all cases whatsoever*," and the matter is at issue: but *Inexpediency* prevents the exercise. *Inexpediency!* curse on the term! What may be *inexpedient* to-day, may be *expedient* to-morrow. *Inexpediency* is the tyrant's sword, that hangs over the head, suspended by a thread; and which *Discretion* only is to keep from falling. But are Englishmen to be thus *worded* out of their Rights? Forbid it, Common-Sense! Or rather let the fixed Principles of the English Constitution, and the eternal Rights of Humanity, be the sister Fates to cut this Thread of Danger, by establishing in its room—*Themselves*.

One word more. It may be further asked, What! are the Americans to enjoy all the Rights appertaining to this Government, and not contribute to its support? I answer, by no means: it is not fitting they should. The fundamental Rights of the English Constitution I have shewn to be, *the security of Life, Liberty, Property, and Freedom in Trade*; and to these Rights all British Subjects *within the realm*, are without exception, entitled, and should enjoy: but it is not so with British Subjects *out of the realm*, for *of them* something more is required, and *of them* something more has been received. They, (I mean the Colonists) surrendered from the first, one of the fundamental

fundamental Rights of the Constitution, to wit, *Freedom in Trade*. This they gave up, and this they put into the monopolizing hands of their brethren here, as the gift of Contribution, for the Price of Protection. Excellent, and how valuable the exchange! when the very gift of contribution did itself enhance the price of Protection! inestimable jewel! than which a nobler did not grace the royal crown; and yet noble as it is, it was not enough to satisfy the appetite of despotism. More must be had. All was required. With *Freedom in Trade, Life, Liberty, and Property* were to be parted with; or, in the alternative, the revenge of *Herod* was to be taken in the blood of Innocents. Revenge has been pursued: but *Herod-like*, and I will use the language of the immortal Shakespear;

When you shall these unhappy deeds relate,
then must you speak,

Of one, whose hand
Like the *base Judean* * threw a pearl away
Richer than all his Tribe.

I have now done with the Thoughts, which the perusal of Mr. Burke's Letter had awakened in my mind, and find myself arrived at that period where I had designed to stop: but as I am upon the important subject of America, as there are one or two matters more that resting on my mind, I could wish to remove, and as I shall not again trouble the public with any further sentiments of mine upon this occasion (for truth being my only object herein, I shall as readily look for it in others, as seek it in myself) so, if I should advance one or two paces beyond my journey's end, I hope I shall be excused.

Having attended my duty in the House of Lords

* This was Herod, who slew his Wife Mariamne.

upon

upon every important debate respecting America, it was there that I derived much useful information to myself; but yet, however instructed, as I truly have been, by the wisdom of those who opposed the measure of a destructive civil war, I must confess, my mind has been more made up on this subject, by what has *not* been said by the advocates for it, by than what has been advanced against it. The *first*, the *chief*, and the *great champion* of all, for this calamity to a country, has been the *now* Earl of Mansfield: but his being so, was to me, at the very first sight, an argument against the war; for his Lordship is no *warrior*, and therefore I supposed that if he had been more competent to the events of such an undertaking, he had been less *sanguine* in his recommendations of it. Let us see, however, what his arguments were. The first point to be settled was, which of the two countries was the *aggressor*; and of course which was to blame: but this would not bear a dispute, for in the year 1764, when all was peace and harmony between both countries, this country, by its Stamp-Act, flung the first *stone* at America, and so (the year 1766 excepted) Great Britain continued this *stoning* of America, like as Stephen was *stoned*, to the year 1775; when, by Negroes and Indians, the Americans were to be *scalped* and *flayed* alive, even as Bartholomew was; and, in both Instances, perhaps for the same reason: for Stephen and Bartholomew were *Saints*, and the Americans are called Dissenters, and Dissenters are cursed, by some Church-of-England-Men, as *Saints*. To get rid then of this stumbling-block, of *aggressorship*, something was to be devised; and this something was, that America meant to become independent of this country: But how was this to be supported? The learned Lord proved it
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by *inuendoes*, by *sayings* and *doings*, *a priori*, out of the American Assemblies; from Montcalm's Letters, which have been found to be forgeries; and from Kalm's Travels, who made a voyage to America in the year 1749, and who says, that he was there told, that "the English Colonies in North-America, in the space of thirty or fifty years, would be able to form a state by themselves, independent of Old England." But here I must beg leave to make an observation or two. Supposing Mr. Kalm, instead of going to North America in the year 1749, had come into England, and on his arrival had been told, that there were men in this country who *on their bare knees had drank the Pretender's health*; would not the inference have been just as fair to say, that this country meant to put the Pretender on the throne of this kingdom, in exclusion of the present family, as to say, what Mr. Kalm does say, that America meant independency? I think it would: for the question is not what individuals say, but what is the sense of the nation. And it is plain it was not the sense of this country to put the Pretender on the throne, and I hope it never will, notwithstanding his health has been so drank, &c. &c. &c. &c. and what the sense of America was, appeared by the unanimous declaration of the people themselves in the most solemn and authentic manner. They say, through their Congress, (and if ever the sense of any people were taken, it was here found, for so free and general an election of Representatives was never before known in the annals of the world) "We *cheerfully* consent to the operation of such Acts of the British Parliament, as are, *bona fide*, restrained to the regulation of our external Commerce, for the purpose of securing the commercial advantages of the whole empire to the

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Mother Country," &c. &c. * It may be indeed said, that America has declared herself independent of this country, and therefore the prophecy of Mr. Kalm was true; but this does not follow; for this country, by putting America out of the Protection of its laws, forced it, for self-preservation sake, into that state of Independency. Admitting, however, that America did mean Independency, I will now ask, Were the measures pursued the means to prevent their becoming so? I apprehend not: For although the force of this country be sufficient for conquest, ten times its force would be insufficient to hold the country in subjection. Three millions of people, not only with their affections lost, but their inveterate hatred gained, at three thousand miles over the Atlantic, distant from the arm of power, are not so easily held prostrate at the feet of Parliament, as Lord North was directed to say could be done. No: One hour of justice and moderation would have done more, than all the German Bloodhounds hired from all the German Traffickers in Blood, in all the petty Principalities of Germany can achieve in twenty years to come.

But to return to the learned Lord. Having set up Independency, and upon what grounds I have shewn as the object of America; his Lordship argued, that the Rubicon was passed, that we should kill the Americans, or the Americans would kill us, and that we could not look back, but must go forward, though our destruction be certain and inevitable. In short he drove us on, until we are all now driven, like so many asses, into a *Pound*; and are so

* Vid. Votes of the Congress, reprinted for J. Almon, opposite Burlington-house, Piccadilly, and also the last Petition of the Congress to the King.

impounded, that Fourteen Shillings Land-Tax in the *Pound*, nay, all the *Pounds*, Shillings, and Pence in the Nation, will not *unpound* us. Such is our disgraceful, and truly to be lamented, situation. The contempt of ourselves, and the mockery of all Europe besides. Bullied by Frenchmen, insulted by Spaniards, memorialized by Dutchmen ; and yet, happy would it be for us, if these were the only calamities that we are to suffer.

Another argument for our entering into this savage War was, that the Americans were Cowards ; an argument as full of indignity to this country, as it was of reproach to him that made it. Of Indignity, for are We to go to war with our enemies because they are cowards ? Does English valour want such motives of inducement for its exertion ? Shameful Reflection ! Of Reproach, for it was the argument of the first Lord of the Admiralty, the Earl of Sandwich, that high Officer of the State, placed at the Head of the British Navy. And is this the language of the gallant Navy of England : No : the brave love the brave, and had rather meet bravery in the wounds of themselves, than cowardice in the disgrace of others. To fight with Cowards is the loss of Honour, and "Honour is the Sailor's, as the Soldier's care." But the Americans are not Cowards, and this I say for the honour of this country. If they were, such an Army and such a Navy doing no more than has been done in America, would well warrant the propriety of those incitements to action, which the Earl of Sandwich thought necessary to hold out in the cowardice of America. When the Americans, therefore, are called Cowards by us, let us remember that it is not them, but ourselves, that we accuse of Cowardice.

The last argument I shall take notice of, (for it is endless to recount the absurdities that have been urged in support of this iniquitous warfare) and which I mention for that it seems to contain a secret that should be known, is the argument of Lord Cardiff, son of the Earl of Bute. His Lordship said

said, as a reason for carrying on this War of Parliament, that the Americans had offered to lay kingdoms at the feet of the Crown, but which his Majesty disdained to accept*. This is an heavy charge, and, as I am as much an enemy to *arbitrary* power in the Crown, as I am to *arbitrary* power in Parliament, if true, I must confess, except so far as the justice of this nation is concerned in such a war, I should feel little concern else for America : but as it seems very unnatural that men should be surrendering their liberties, at the very time that they are fighting for them, so I have reason to believe that this argument has been formed upon grounds that will not support it. It is true, the Americans acknowledge the authority of the King, and will not acknowledge the authority of the Parliament. It is from hence, therefore, I presume, inferred, that the Americans are laying kingdoms at the feet of his Majesty ; and if so, to explain this matter, is to remove the charge. The Americans were the subjects of the Crown of England, and of course owed allegiance to the King of England. They were never the *subjects* of their *fellow-subjects* the Parliament of England, and therefore neither owed nor professed allegiance to Parliament. Besides, the King of England, by the Constitution of England, cannot levy taxes on his subjects ; and therefore, for the Americans to acknowledge the authority of the King, is no surrender of their property to the King : whereas if they acknowledged the authority of Parliament, who do exercise the right of taxation over the People when represented, it would be without their being represented, a surrender of their property to Parliament ; and a forging of chains for themselves. Under the acknowledged authority, then of the Crown, the Americans still preserve their constitutional Rights : under the *required* acknowledged authority of Parliament, they would lose them ; and this is the reason that the Americans acknowledge

* The Archbishop of York has adopted the same assertion. See his Sermon, p. 22, and 23.

knowledge the one, and will *never* acknowledge the other. But it is feared, that some future King, not his present Majesty, for he has not a wish to govern but through his Parliaments, may, upon requisition to his faithful American subjects, procure such large grants of money, as shall enable him to govern without Parliaments. Indeed, if we are to judge of what America may do, by what it has done, upon suchlike occasions, this argument is not without its force; and therefore, to prevent such generosity from being hereafter hurtful to this country, (and there cannot be a better time for it, as it is the object of his present Majesty to maintain the *supremacy* of Parliament,) let an Act be passed, (if it be not too late) declaring that all money obtained from the Colonies by requisition from the Crown, shall be carried into the Exchequer and accounted for in Parliament. This will remove the danger apprehended, and prevent those *lovers of slavery*, the Americans, from making, at any future period, the Crown of England arbitrary.

Upon the whole, when I perceive a war, and such a war too, so weakly supported, and yet so violently pursued; when I find the most elevated of the Church, preaching and publishing to the world passive obedience and non-resistance to the supremacy of Law *, whether that Law be right or wrong,

* The Archbishop of York says, "the foundation of legal freedom, is the *supremacy of law*." This I suppose is an apology for his Grace's *allegiance* to the Quebec-Act, and for his making this act a pattern for cramming Bishopricks down the Throats of the Americans, by the help of the Civil Power, that is, on the points of Bayonets. See his Sermon, pag. 19 and pag. 24.

His Lordship says too, "As there are in the nature of things, but two sorts of Government; that of Law, and that of Force; it wants no argument to prove that under the last Freedom cannot subsist." This is a distinction without a difference; for when *Law* is contrary to the natural or civil rights of mankind, it is *Force*, and the worst of all *force*: for it is as "a wolf in sheep's cloathing," and cometh unawares, "like a thief in the night." See p. 19 of the above sermon.

Again, his Lordship says, "these indeed" (that is "Despotism and Anarchy) have usually gone together, for no Anarchy

wrong, whether it be good or bad, whether it be to establish Popery or Protestantism, whether it be enacted by an honest, or by a corrupt and abandoned Parliament ; when I see men that were pillored in the reign of good old George II. pensioned in this, and for the same reasons ; when I hear of others hired to root out the very idea of *public virtue* from the minds, and tear *benevolence* from the hearts of Englishmen ; when I reflect, but why add more to the black catalogue of public dangers ? it is time to look at home : it is time, even with *Stentorian* voice, to call for union among the Friends of the Constitution : it is time that private opinion should yield to public safety : it is time that we keep both “ watch and ward,” for if the liberties of our fellow-subjects in America are to be taken from them, it is for the idiot only to suppose that we can preserve our own. The dagger uplifted against the breast of America, is meant for the heart of Old England. *Non agitur de vectigalibus. Libertas in dubio est.*

In fine these are my Sentiments, and these my Principles. They are the Principles of the Constitution ; and under this persuasion whilst I have signed them with my Name, I will, if necessary, as readily, seal them with my Blood.

“ chy ever prevailed, which did not *end* in Despotism.” This is a Bull, but an Irish one ; and not a Popish Bull. If where Anarchy prevails Despotism *ends*, Anarchy and Despotism cannot usually *go together*. See. p. 20.

His Grace will excuse the Attention I have paid him in the course of my observations : but as I am unfortunately one of those Parties who have (according to him) “ no Principle belonging “ to them,” and are “ in the last stage of political Depravity,” I was willing to examine, a little, his Lordship’s principles ; that if I approved them, I might adopt them.

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